

MINUTES OF A PUBLIC HEARING CONDUCTED BY THE ST. LOUIS COUNTY BOARD OF ADJUSTMENT HELD VIRTUALLY THURSDAY, AUGUST 13, 2020.

10:30 AM – 12:25 PM

Board of Adjustment members in attendance: Steve Filipovich
James McKenzie
Sonya Pineo
Dave Pollock
Roger Skraba
Ray Svatos
Diana Werschay, Chair

Board of Adjustment members absent: None - 0

Decision/Minutes for the following public hearing matters are attached:

NEW BUSINESS:

- A. Elizabeth Cook, S23, T63N, R13W (Morse)
- B. Teresa Kochar, S9, T57N, R17W (Fayal)
- C. Matthew Sobczak, S13, T51N, R16W (Grand Lake)
- D. Robert Gregg, S19, T62N, R15W (Breitung)

OTHER BUSINESS:

Motion by Skraba/McKenzie to approve the minutes of the July 9, 2020 meeting.

In Favor: Filipovich, McKenzie, Pineo, Pollock, Skraba, Svatos, Werschay – 7

Opposed: None – 0

Motion carried 7-0

NEW BUSINESS:

Case 6222 (Health) – Elizabeth Cook

The first hearing item was for Elizabeth Cook, property located in S23, T63N, R13W (Morse). The applicant is requesting relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced shoreline setback. *Tyler Lampella*, Environmental Specialist Senior, reviewed the staff report as follows:

- A. The applicant is proposing the installation of a peat filter sewage treatment system at a reduced shoreline setback.
- B. The applicant is proposing a lake setback of 24 feet where 75 feet is required.
- C. The property is currently served by a drywell and unapproved greywater disposal. The drywell is located approximately 22 feet from the shoreline.
- D. The current dwelling is a 4 bedroom cabin with a clothes washer and dishwasher (DF). Pressurized water was added to the cabin in 1956.
- E. The cabin is located on an island.

Tyler Lampella reviewed staff facts and findings as follows:

A. Official Controls:

1. Ordinance 61 states that all ISTS components must be setback in accordance with Table VII of the SSTS Technical standards and the setback requirements in the MN Shoreland Rules. The required setbacks are 75 feet from the shoreline.

B. Practical Difficulty:

1. The island has been developed since the early 1900s with running water added in 1956. Modern standards were not in place for treating wastewater in 1956. The island has no suitable area for wastewater treatment that meets the required lake setback.
2. The only option is to not generate wastewater and make use of a vaulted outhouse which would also require relief from the lake setback requirement.

C. Essential Character of the Locality:

1. Burntside Lodge is located approximately 160 feet from the subject parcel (island). There are numerous parcels in this area compared to other areas of the lake.
2. Most of the development in the area is well established.

D. Other Factors

1. Using pretreatment of the sewage (peat filter system) will be a substantial improvement over the current situation. The existing drywell system is a disposal system that does a very poor job of treating wastewater.
2. The landowner has shown that the proposed solution is better than the status quo and a full faith effort was made to improve the situation.

Tyler Lampella noted no items of correspondence.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow relief from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced shoreline setback, the following conditions shall apply:

1. There shall be no increased water usage on the subject parcel.
2. The lake setback shall be maximized to the greatest extent possible and shall be no closer than 24 feet to the Ordinary High Water Level.
3. The proposal shall adhere to all county, state and federal regulations.

Kermit Cook and *Elizabeth Cook*, the applicants, stated the cabin has been in the Alvers family since the 1950s. They wanted to make sure the septic has been assessed and improve the treatment system from what had been there.

No audience members spoke.

DECISION

Motion by McKenzie/Skraba to approve a variance from St. Louis County SSTS Ordinance 61 adopted Technical Standards 7080.2150, Subpart 2, Section F, Table VII, to allow a subsurface sewage treatment system installation at a reduced shoreline setback, based on the following facts and findings:

A. Official Controls:

1. Ordinance 61 states that all ISTS components must be setback in accordance with Table VII of the SSTS Technical standards and the setback requirements in the MN Shoreland Rules. The required setbacks are 75 feet from the shoreline.
2. An effort is being made to enhance the existing system to be more in compliance with the official controls.

B. Practical Difficulty:

1. The island has been developed since the early 1900s with running water added in 1956. Modern standards were not in place for treating wastewater in 1956. The island has no suitable area for wastewater treatment that meets the required lake setback.
2. The only option is to not generate wastewater and make use of a vaulted outhouse which would also require relief from the lake setback requirement.
3. There is no suitable area on the property to meet the shoreline setback.

C. Essential Character of the Locality:

1. Burntside Lodge is located approximately 160 feet from the subject parcel (island). There are numerous parcels in this area compared to other areas of the lake.
2. Most of the development in the area is well established.

D. Other Factors

1. Using pretreatment of the sewage (peat filter system) will be a substantial improvement over the current situation. The existing drywell system is a disposal system that does a very poor job of treating wastewater.
2. The landowner has shown that the proposed solution is better than the status quo and a full faith effort was made to improve the situation.

The following conditions shall apply:

1. There shall be no increased water usage on the subject parcel.
2. The lake setback shall be maximized to the greatest extent possible and shall be no closer than 24 feet to the Ordinary High Water Level.
3. The proposal shall adhere to all county, state and federal regulations.

In Favor: Filipovich, McKenzie, Pineo, Pollock, Skraba, Svatos, Werschay

Opposed: None - 0

Motion carried 7-0

Case 6234 – Teresa Kochar

The second hearing item was for Teresa Kochar, property located in S9, T57N, R17W (Fayal). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section

3.2, to allow maximum lot coverage to exceed 25 percent allowed, and relief from St. Louis County Zoning Ordinance 62, Article IV, Section 4.4 A. 1., to allow maximum building footprint on a nonconforming lot of record to exceed 15 percent allowed. *Jared Ecklund*, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting approval to allow the lot coverage to exceed 25 percent of the lot area.
- B. The proposed lot coverage would be approximately 6,320 square feet where 4,247 square feet is allowed.
- C. The applicant is also requesting approval to allow the building footprint on the property to exceed 15 percent of the lot area.
- D. The proposed building footprint is 3,096 square feet where 2,196 square feet is allowed.
- E. The applicant is proposing to add a new accessory structure to the property.
- F. The proposed structure is a 30 foot by 30 foot (900 square foot) garage.
- G. The proposed structure brings the property's building footprint to 2,548 square feet where 2,196 square feet is allowed.
- H. The applicant is also proposing to pave the driveway and parking area on the property.
- I. Adding the pavement and the new garage will bring the lot coverage on the property to 6,320 square feet where 4,247 square feet is allowed.
- J. The proposed pavement includes a roadside entrance to the current garage, an entrance to the proposed new garage and a driveway nearly up to the house.
- K. The shoreline is steep where the dwelling is located on the property. The garage would be located closer to the road.

Jared Ecklund reviewed staff facts and findings as follows:

- A. Official Controls:
 1. Zoning Ordinance 62 states that the maximum allowed lot coverage in a Residential (RES)-11 zone district is 25 percent.
 - a. The applicant is requesting lot coverage of approximately 37 percent, due in part to paving the driveway and associated apron/parking area to the proposed garage.
 - b. The applicant has stated there are drainage issues associated with the current gravel driveway.
 2. Zoning Ordinance 62 states that the maximum building footprint allowed on a nonconforming lot of record is 15 percent.
 - a. The applicant is requesting a building footprint of approximately 16.5 percent.
 - b. Existing structures, including one other detached garage, contribute to the building footprint, as well as the small platted lot size.
 - c. The subject lot is 0.38 acre in size where a 0.5 acre would meet both zone district standards and nonconforming building footprint allowances.
 3. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
 4. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.

5. Through the Land Use Goals, Objectives and Implementation sections, the Land Use Plan is meant to provide ways of improving the variance process and encourages adherence to existing criteria to ultimately reduce the volume of variance applications received by the county.
6. While the reason behind the ordinance restriction and zoning classification make sense for the area where the property is located, this particular lot was platted slightly smaller than many other lots in the plat of Cedar Island Park. The subject property was platted in 1946 and at such time it may not have been intended that properties within the plat would be used for year-round development.

B. Practical Difficulty:

1. Other than the property being a small, platted nonconforming lot of record, there is not much unique physical circumstance of the property.
 - a. One unique physical circumstance of Lot 49, as platted, is that it is slightly smaller than other lots in the plat.
 - b. The lot also tapers back towards the road and is located at a slight bend in the road, which both limits area and lot width of the property.
2. The property is developed with a dwelling, accessory structure, sauna and is served by a municipal sewer and water system. Fayal public utilities will not be impacted by this proposal and the interim operating director has signed off on the proposal as such.
3. Alternatives exist that either do not require variance or minimize the degree of variance, such as:
 - a. The applicant could reduce the size of the proposed structure.
 - b. The applicant could remove the existing garage and replace it with a slightly larger structure.
 - c. The applicant could add an additional 352 square feet to the existing structure.
 - d. The applicant could reduce the size proposed impervious surface area or leave the driveway and parking areas unpaved.

C. Essential Character of the Locality:

1. The existing neighborhood consists of small platted lots of record.
2. There have been some other variance approvals in the area similar to this request due to the small size of the lots in the area.
3. The applicant is not proposing a new use to the neighborhood/area.
4. Most lots within Cedar Island Park plat have one or more accessory structures.
5. Most lots also have paved driveways, but the lots themselves may be larger in size, allowing increased lot coverage and building footprint area.

D. Other Factor:

1. The proposed and existing accessory structure cannot be seen from the lake.

Jared Ecklund noted two items of correspondence from the Town of Fayal which has deferred its recommendation to St. Louis County and Barbara Nobens opposed to the request. It is noted that Barbara Nobens is the next door neighbor to the applicant. These items were given to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow maximum lot coverage to exceed 25 percent and to allow maximum building footprint on a nonconforming lot of record to exceed 15 percent, the following conditions shall apply:

1. The stormwater runoff from the proposed structure shall not directly discharge onto the road or on adjacent lots.
2. The maximum lot coverage shall be minimized to the greatest extent possible.

Teresa and Justin Kochar, the applicants, bought the property four years ago and have been improving the property since. One improvement they wanted to make is additional garage space. The current garage is located 123 feet from the house. They want to be able to store their pontoon boat that does not fit in the current garage space. They are concerned that the driveway washes out to the road because it slopes down. They want to pave by the garage up towards the house and be able to back up towards the house. There is a safety issue backing up at a 90 degree angle. They would not be increasing the size of the driveway. Their neighbor's concerns about the garage blocking the view would not apply because the garage would be located near the road.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked why this lot is buildable and permit-able if the lot is less than a half-acre and nonconforming. *Jared Ecklund* stated it is considered buildable because there is existing development on the property. It is considered a nonconforming lot of record. If there was no existing development on the property, it would be different. *Jenny Bourbonais*, Acting Secretary, added that there is municipal sewer and water.
- B. Practical difficulty and that the neighbors wishes should be taken into account especially given the lot coverage would be substantially increased.
- C. Board member *McKenzie* stated the alternatives are to reduce the size of the proposed structure, remove the existing structure and build a slightly larger structure, add 352 square feet to the existing garage or reduce the size of impervious surface. The last alternative to reduce the size of impervious surface might be the best alternative. There are other ways to reduce the amount of stormwater runoff to the road.
- D. How to reduce the amount of impervious surface the applicant is requesting. This could be done by reducing the amount of driveway that is paved. Board member *Skraba* suggested that the applicant could partially pave the surface and use an alternative to pavement to surface the rest of the driveway. There could be a new structure or a paved driveway, but not both.

DECISION

Motion by *Skraba/McKenzie* to approve a variance to allow maximum lot coverage to exceed 25 percent and to allow maximum building footprint on a nonconforming lot of record to exceed 15 percent, based on the following facts and findings:

- A. Official Controls:
 1. The variance requests are partially in harmony with the intent and purposes of official controls.

2. Only part of the request is being granted.
3. The lot is small in size and already developed.

B. Practical Difficulty:

1. One unique physical circumstance of Lot 49, as platted, is that it is slightly smaller than other lots in the plat.
2. The lot also tapers back towards the road and is located at a slight bend in the road, which both limits area and lot width of the property.

C. Essential Character of the Locality:

1. The existing neighborhood consists of small platted lots of record.
2. There have been some other variance approvals in the area similar to this request due to the small size of the lots in the area.
3. The applicant is not proposing a new use to the neighborhood/area.
4. Most lots within Cedar Island Park plat have one or more accessory structures.
5. Most lots also have paved driveways, but the lots themselves may be larger in size, allowing increased lot coverage and building footprint area.

D. Other Factors:

1. The proposed and existing accessory structure cannot be seen from the lake.
2. Asphalt can be used to keep dirt off the road and help with erosion onto the road. However, the applicant shall work to decrease the amount of proposed impervious surface.

The following conditions shall apply:

1. The stormwater runoff from the proposed structure shall not directly discharge onto the road or on adjacent lots.
2. The maximum lot coverage shall be minimized to the greatest extent possible.

In Favor: Filipovich, McKenzie, Pineo, Skraba, Svatos, Werschay - 6

Opposed: Pollock - 1

Motion carried 6-1

Case 6224 – Matthew Sobczak

The third hearing item was for Matthew Sobczak, property located in S13, T51N, R16W (Grand Lake). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article III, Section 3.2, to allow an accessory structure at a reduced property line setback and to exceed maximum lot coverage and St. Louis County Zoning Ordinance 62, Article IV, Section 4.4A. 1., to allow the building footprint on a lot that does not conform to the minimum area standard to exceed 15 percent of the lot area. Board member *McKenzie* disclosed that he does know the applicant but has no financial interest in this variance proposal. The Board did not ask that Board member *McKenzie* recuse himself from the hearing.

Donald Rigney, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting to construct a 28 foot by 36 foot (1,008 square foot) garage located 2 feet from the property line where 10 feet is required.
- B. The proposed garage would replace a recently-razed 22 foot by 24 foot (528 square foot) garage.
- C. Per the applicant, the previous garage was 10 feet from the nearest property line.
- D. The total impervious surface will be 35.9 percent where 25 percent is allowed.
- E. The total building footprint on the lot will be 16.2 percent where 15 percent is allowed.
- F. The applicant has provided a survey of the property.

Donald Rigney reviewed staff facts and findings as follows:

A. Official Controls:

- 1. In a Residential (RES)-10 zone district, Zoning Ordinance 62, Article III requires a minimum 10 foot property line setback for accessory structures; the applicant is requesting a 2 foot property line setback.
- 2. In a RES-10 zone district, St. Louis County Zoning Ordinance 62, Article III requires a max lot coverage of 25 percent.
 - a. As proposed, the total impervious surface coverage will be 35.9 percent.
 - b. Historically, with the previous garage, the total impervious surface coverage was 33.1 percent.
- 3. The subject parcel is a shoreland riparian nonconforming lot.
 - a. The lot is allowed a maximum building footprint of 15 percent of the lot area.
 - b. As proposed, the building footprint will be 16.2 percent.
 - c. Historically, with the previous garage, the total building footprint was 13.4 percent.
- 4. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
- 5. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applications are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
- 6. Through the Land Use Goals, Objectives and Implementation sections, the Land Use Plan is meant to provide ways of improving the variance process and encourages adherence to existing criteria to ultimately reduce the volume of variance applications received by the county.

B. Practical Difficulty:

- 1. There are no unique physical circumstances of the property other than the lot being an old, platted, nonconforming lot of record.
- 2. A variance is not the only option as there are alternatives:
 - a. Alternative: Construct a garage that conforms to property line setbacks and building foot print requirements.
 - i. For example, a 22 foot by 36 foot (792 square feet) garage would conform to zoning ordinance requirements. The depth of the garage is the same as the existing garage, which conformed to the required property line setback, and the width is the same as requested. The total building footprint would be 14.9 percent.

- ii. Any alternative replacement structure larger than the previous garage (528 square feet) will require the removal of impervious surface to the point that there is no net gain.

C. Essential Character of the Locality:

1. The applicant is not proposing a new use to the area as there are other residential properties in area. Many of these properties consist of principal structures and accessory structures.
2. The Caribou Lake Tracts plat was platted in 1922 prior to zoning regulations.
 - a. As platted, a majority of the individual Lots in Block 1 of Caribou Lake Tracts have a 50 foot lot width.

D. Other Factors:

1. There is a recorded 20 foot wide easement on the parcel for the Birch Point Sewer District.
2. Per the applicant, the accessory structure the applicant wishes to replace conformed to the 10 foot property line setback.
3. The county would benefit by enforcement of the Ordinance because it would promote the regulation of setbacks and land use in accordance with the St. Louis County Comprehensive Land Use Plan and Zoning Ordinance 62.
4. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.

Donald Rigney noted one item of correspondence from the Town of Grand Lake in support of this variance request. This item was given to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow an accessory structure at a reduced property line setback and to exceed the maximum lot coverage and to allow maximum building footprint on a nonconforming lot of record to exceed 15 percent allowed, the following conditions shall apply:

1. Stormwater runoff shall not discharge directly onto adjacent properties.
2. A survey shall be submitted prior to the issuance of a land use permit.
3. The maximum lot coverage shall be minimized to the greatest extent possible.

Allie Sobczak, the applicant, stated the reason they tore down the old garage was because both doors didn't work and the structure was dilapidated. They have a round-top shed they currently store their watercraft in and they would need to have a 28 foot deep structure for their craft storage. They will be tearing out the 60 foot by 20 foot pavement pad located beyond the garage and will also remove the round-top shed. The 2 foot setback is not ideal.

Matt Sobczak, the applicant, stated he works for the Sheriff's office and wants a safe place to park his squad car. Based on the survey, there was no way the old garage would have met the 10 foot

property line setback. It was likely located 3 to 4 feet from the property line and the new garage would be located in the same place.

No audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Skraba* asked if staff had been to the property and asked if property line setbacks were being met. *Donald Rigney* stated that he did visit the site and that there could be setbacks in the area that are not being met. Some of these lots are 50 feet wide.
- B. Board member *Werschay* stated that a 2 foot setback would not allow enough space to maintain that side of the garage. Board member *Skraba* suggested a 4 foot setback would allow that. The applicants agreed to the 4 foot setback.

DECISION

Motion by Skraba/McKenzie to approve a variance to allow an accessory structure at a reduced property line setback of 4 feet where 10 feet is allowed and to exceed the maximum lot coverage and to allow maximum building footprint on a nonconforming lot of record to exceed 15 percent allowed, based on the following facts and findings:

- A. Official Controls:
 - 1. The variance requests are partially in harmony with the intent and purposes of official controls.
 - 2. This is a narrow lot and trying to fit a garage that meets all setbacks is difficult.
 - 3. Changing the size of the garage to make it shorter and/or deeper is not practical.
- B. Practical Difficulty:
 - 1. There are no unique physical circumstances of the property other than the lot being an old, platted, nonconforming lot of record.
 - 2. The property is only 50 feet wide and there is a sewage easement that somewhat limits development.
- C. Essential Character of the Locality:
 - 1. The applicant is not proposing a new use to the area as there are other residential properties in area. Many of these properties consist of principal structures and accessory structures.
- D. Other Factor:
 - 1. Vehicles should be in storage.
 - 2. The Town of Grand Lake was in support of the variance request at a 2 foot property line setback.

The following conditions shall apply:

- 1. Stormwater runoff shall not discharge directly onto adjacent properties.
- 2. A survey shall be submitted prior to the issuance of a land use permit.
- 3. The maximum lot coverage shall be minimized to the greatest extent possible.

In Favor: Filipovich, McKenzie, Pineo, Pollock, Skraba, Svatos, Werschay

Opposed: None - 0

Motion carried 7-0

Case 6225 – Robert Gregg

The fourth hearing item was for Robert Gregg, property located in S19, T62N, R15W (Breitung). The applicant is requesting relief from St. Louis County Zoning Ordinance 62, Article VIII, to allow an after-the-fact subdivision of a platted outlot; and St. Louis County Zoning Ordinance 62, Article III, Section 3.2 and Article IV, Section 4.4D, to allow a lot that does not conform to the zoning district minimal dimensional standards and is less than one-half acre in size to be permitted as buildable.

Donald Rigney, St. Louis County Senior Planner, reviewed the staff report as follows:

- A. The applicant is requesting that a platted outlot that was improperly subdivided in 2003 be considered a buildable parcel.
- B. The parcel is 0.10 acre in size.
- C. If the variance is granted, the applicant intends to construct a water-oriented accessory structure.
- D. The original Outlot A was designated as a “public bathing beach.”

Donald Rigney reviewed staff facts and findings as follows:

- A. Official Controls:
 1. A subdivision of a platted lot shall only be done through the platting process.
 2. The parcel is zoned RES-11 requiring a minimum of 0.5 acres and 100 feet of lot width.
 - a. The existing parcel is 0.10 acres and 91.81 feet in lot width.
 3. Lake Vermilion is a General Development lake and requires a 75 foot shoreline setback; the shore impact zone is 50 feet.
 4. Zoning Ordinance 62, Article IV, Section 4.4D states that a single lot of record may be permitted as a buildable lot if all of the following criteria can be met:
 - a. The lot is a minimum of one-half acre in size with no public sewer or water.
 - b. The lot shall meet the definition of a lot of record.
 - c. The lot when created, complied with official controls in effect at the time.
 - i. When platted, Outlot A complied with official controls. The parcel in question described above did not comply with official controls when created.
 5. If the parcel had public sewer and public water, the St. Louis County Zoning Ordinance would still require a lot of record be a minimum of 0.16 acres in size.
 6. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county’s planning-related regulation by minimizing and improving management of nonconformities.
 7. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
 8. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted Minnesota Statute 394.22 Subd. 10.

9. Goal LU-10 of the St. Louis County Comprehensive Land Use Plan is to ensure that new development is located, designed, and built to avoid environmental and other hazards.
10. Objective LU-10.1 of the St. Louis County Comprehensive Land Use Plan is to preserve environmentally sensitive areas, such as 100-year floodplain, and other natural features, and protect these areas as open space.

B. Practical Difficulty:

1. There is no unique circumstances of the property that the owner did not create.
2. The Echo Point plat was created in 1921. Outlot A, as platted, was designated as a “public bathing beach.”
 - a. Outlot A, in its entirety, was never intended for development.
3. Since the plats creation, Outlot A has been split into four parcels under three ownerships.
 - a. The other two owners of the Outlot A remnants have lots adjoining their Outlot A remnants.
 - b. The applicant owns property down the road that does not adjoin the subject parcel.
4. The applicant currently uses the parcel for lake access.
5. The applicant has not met the burden of demonstrating practical difficulty as the property has reasonable use as currently undeveloped.

C. Essential Character of the Locality:

1. Although any individual lot, as platted within the Echo Point plat, does not conform to current zoning standards, a majority of parcels in the area are comprised of two or more contiguous lots in common ownership.
 - a. A majority of these lots either meet zoning requirements or are a lot of record and meet the minimum requirements to be permitted as buildable.
2. There have been no similar variances in the area.

D. Other Factors:

1. If the variance is granted, only a water-oriented accessory structure may be able to conform to required setbacks without additional variance requests.
 - a. If a water-oriented accessory structure were to be constructed in a manner that conforms to all required setbacks, the structure has the potential to be located within the floodplain.
2. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
3. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning and subdivision ordinance nonconformities throughout the county.
 - a. Allowing development on improperly created parcels that do not conform to minimum zoning requirements, without sufficient practical difficulty, is not in keeping with the intent of the St. Louis County Zoning and Subdivision Ordinances or St. Louis County Comprehensive Land Use Plan.

4. Approval of a request such as this may set a precedence for development on substandard parcels throughout St. Louis County, if not just for the remnants of Outlot A.

Donald Rigney noted three items of correspondence. The Town of Breitung had no comment on this request, Daniel Mobilia opposed the variance request, and Mary Alice Slick opposed the variance request. This correspondence was given to the Board of Adjustment prior to the hearing.

STAFF RECOMMENDATION

In the event that the Board of Adjustment determines that the proposal meets the criteria for granting a variance to allow an after-the-fact subdivision of a platted outlot and to allow a lot that does not conform to the zoning district minimal dimensional standards and is less than one-half acre in size to be permitted as buildable, the following conditions shall apply:

1. No additional variances shall be granted on this parcel.
2. Parcel Identification number 270-0070-01430, as legally described above, shall remain in common ownership with Parcel Identification number 270-0020-01610 legally described as: Lot 4 ex 18 ac platted as Echo Point or with an adjoining parcel.

Robert Gregg, the applicant, stated they purchased this property eight years ago. They have used this parcel as a beach. They intend to retire up there in the next few years. They would like to build a gazebo in order to secure their possessions and get out of the weather. It is some distance to get up the hill back to their cabin. He understands they bought this property the way it is. There is also a safety factor as they do not want their children to run back and forth across the road. They are trying to minimize the number of times they cross the road and enjoy the lakefront more.

One member of the audience spoke in opposition.

Dick Peyla, 5817 Echo Point Road, stated they are the adjoining property owner on the north lot line. This property is tiny, less than 100 feet wide. The applicant knew the lot was unbuildable when he bought it. The lot has been used without problem as-is. He does not see a practical difficulty. Staff identified that this would be the first variance of its kind on Echo Point. He also has concerns that the lot is smaller than the site sketch shows and the structure would be larger than it appears on paper. The existing road touches the corner of the property. The structure would be very close to the road. He is also concerned that this structure would not be a gazebo.

No other audience members spoke.

The *Board of Adjustment* discussed the following:

- A. Board member *Pollock* asked about the floodplain and its effect on doing anything on the property. *Donald Rigney* stated that any structure built on the property would need to meet Floodplain Ordinance standards and any FEMA requirements.
- B. Board member *Pollock* asked about the two properties being tied together. These lots could never be sold independently? *Donald Rigney* stated that the only exception is if the Outlot would be sold to another adjacent landowner.
- C. Board member *Pollock* stated this sketch is minimalist because it does not show where the road right-of-way is, where the actual road is and where the applicant's other property is.

Donald Rigney stated the applicant's sketch was not a survey drawing. However, the Public Works surveyors did have a survey. This sketch was based on the survey based on geo-referencing. *Jenny Bourbonais*, Acting Secretary, stated that the site sketch was submitted for a gazebo. This was not submitted for this variance, but for a structure.

- D. Board member *Pollock* added this property was sold as nonconforming, nonbuildable lake access to the applicant.
- E. Board member *Skraba* stated that the actual road is not the platted road. Has anyone adjusted the plat to fit the actual road? Board member *Pollock* noted that the platted road is Breitung Township's right-of-way. The township has not abandoned the right-of-way.
- F. *Donald Rigney* noted that the water-oriented accessory structure has the potential to meet all standards.
- G. Board member *Pollock* asked if the applicant has 20 acres of property across the lakefront parcel. Any structure could easily be built on the main property.
- H. Board member *Werschay* asked if the applicant could park a travel trailer on the property. *Jenny Bourbonais* stated that because the lot is improperly created, they would not be able to utilize a camper.
- I. Board member *Pollock* asked if the applicant could use a portable gazebo. *Jenny Bourbonais* stated that it would require a land use permit because the county does not allow temporary structures on the property.
- J. Board member *Skraba* stated this variance would make this property a legal parcel. *Jenny Bourbonais* stated they are looking to obtain a lot of record status in order to get a land use permit.
- K. *Donald Rigney* stated the most prior division was in 2003. *Jenny Bourbonais* stated this was before staff was required to review subdivisions and add a stamp to a deed to be recorded.

DECISION

Motion by Pollock/Svatos to deny a variance to allow an after-the-fact subdivision of a platted outlot and to allow a lot that does not conform to the zoning district minimal dimensional standards and is less than one-half acre in size to be permitted as buildable, based on the following facts and findings:

- A. Official Controls:
 - 1. A subdivision of a platted lot shall only be done through the platting process.
 - 2. The parcel is zoned RES-11 requiring a minimum of 0.5 acres and 100 feet of lot width.
 - a. The existing parcel is 0.10 acres and 91.81 feet in lot width.
 - 3. Lake Vermilion is a General Development lake and requires a 75 foot shoreline setback; the shore impact zone is 50 feet.
 - 4. Zoning Ordinance 62, Article IV, Section 4.4D states that a single lot of record may be permitted as a buildable lot if all of the following criteria can be met:
 - a. The lot is a minimum of one-half acre in size with no public sewer or water.
 - b. The lot shall meet the definition of a lot of record.
 - c. The lot when created, complied with official controls in effect at the time.
 - i. When platted, Outlot A complied with official controls. The parcel in question described above did not comply with official controls when created.
 - 5. If the parcel had public sewer and public water, the St. Louis County Zoning Ordinance would still require a lot of record be a minimum of 0.16 acres in size.

6. Goal LU-3 of the St. Louis County Comprehensive Land Use Plan is to improve the integrity of the county's planning-related regulation by minimizing and improving management of nonconformities.
7. Objective LU-3.1 of the St. Louis County Comprehensive Land Use Plan is to base variance decisions on uniform approval criterion to ensure all applicants are treated equitably, that community health and safety is protected, and that the overall character of a given area is preserved.
8. Objective LU-3.3 of the St. Louis County Comprehensive Land Use Plan is to acknowledge why nonconformities are a concern and that variances should be for exceptional circumstances as noted Minnesota Statute 394.22 Subd. 10.
9. Goal LU-10 of the St. Louis County Comprehensive Land Use Plan is to ensure that new development is located, designed, and built to avoid environmental and other hazards.
10. Objective LU-10.1 of the St. Louis County Comprehensive Land Use Plan is to preserve environmentally sensitive areas, such as 100-year floodplain, and other natural features, and protect these areas as open space.

B. Practical Difficulty:

1. There is no unique circumstances of the property that the owner did not create.
2. The Echo Point plat was created in 1921. Outlot A, as platted, was designated as a "public bathing beach."
 - a. Outlot A, in its entirety, was never intended for development.
3. Since the plats creation, Outlot A has been split into four parcels under three ownerships.
 - a. The other two owners of the Outlot A remnants have lots adjoining their Outlot A remnants.
 - b. The applicant owns property down the road that does not adjoin the subject parcel.
4. The applicant currently uses the parcel for lake access.
5. The applicant has not met the burden of demonstrating practical difficulty as the property has reasonable use as currently undeveloped.

C. Essential Character of the Locality:

1. Although any individual lot, as platted within the Echo Point plat, does not conform to current zoning standards, a majority of parcels in the area are comprised of two or more contiguous lots in common ownership.
 - a. A majority of these lots either meet zoning requirements or are a lot of record and meet the minimum requirements to be permitted as buildable.
2. There have been no similar variances in the area.

D. Other Factors:

1. If the variance is granted, only a water-oriented accessory structure may be able to conform to required setbacks without additional variance requests.
 - a. If a water-oriented accessory structure were to be constructed in a manner that conforms to all required setbacks, the structure has the potential to be located within the floodplain.

2. Zoning Ordinance 62 states that it shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this ordinance, the Board of Adjustment shall not approve any variance.
3. Objective LU-3.2 of the St. Louis County Comprehensive Land Use Plan is to have county staff and decision-makers work together to decrease the amount of zoning and subdivision ordinance nonconformities throughout the county.
 - a. Allowing development on improperly created parcels that do not conform to minimum zoning requirements, without sufficient practical difficulty, is not in keeping with the intent of the St. Louis County Zoning and Subdivision Ordinances or St. Louis County Comprehensive Land Use Plan.
4. Approval of a request such as this may set a precedence for development on substandard parcels throughout St. Louis County, if not just for the remnants of Outlot A.

In Favor: Filipovich, McKenzie, Pineo, Pollock, Skraba, Svatos - 6

Opposed: Werschay - 1

Motion carried 6-1

Motion to adjourn by Skraba. The meeting was adjourned at 12:35 p.m.